



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0557]

RIN 1625-AA87; 1625-AA00

Security Zones; 2016 Republican National Convention, and Associated Voluntary First Amendment Safety Zones, Lake Erie and Cuyahoga River, Cleveland, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing temporary security zones and safety zones for navigable waters within the Cleveland Harbor during the 2016 Republican National Convention. The Republican National Convention and related activities will be held at Quicken Loans Arena and other venues from July 17, 2016 through July 22, 2016. The Department of Homeland Security has designated the 2016 Republican National Convention as a National Special Security Event (NSSE). The security zones are necessary to protect convention delegates, official parties, dignitaries, the public and surrounding waterways from terrorist acts, sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Buffalo or a designated representative.

**DATES:** This rule is effective from 8 a.m. July 15, 2016 through 11:59 p.m. July 22, 2016.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket,

go to <http://www.regulations.gov>, type USCG-2016-0557 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LT Michael Collet, Chief of Waterways Management, Sector Buffalo, U. S. Coast Guard; telephone 716-843-9322, email D09-SMB-SECBuffalo-WWM@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
Pub. L.	Public Law
NPRM	Notice of Proposed Rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule due to it being impracticable and contrary to the public interest. Due to the sensitive security issues related to the Republican National Convention, providing a public notice and comment period would be contrary to the security zone’s intended objective of protecting VIPs and the public, because we cannot share the sensitive security information details prior to the rule being published.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Any delay encountered in this temporary rule's effective date would be contrary to the public interest given the need to ensure the safety and security of the event and participating members during the Republican National Convention from July 15, 2016 through July 22, 2016.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Buffalo has determined that potential hazards associated with this event are a security concern surrounding the area. These hazards include potential security threats, violent or disruptive public disorder, delivery of a weapon of mass destruction, launch of a stand-off attack weapon, or delivery of an armed assault force. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the security zone through various times throughout the event.

Additionally, the Coast Guard believes that, given the nature of the First Amendment activity expected and the likely type of vessels used by individuals desiring to express their First Amendment rights—namely kayaks and other small vessels— safety zones designating a voluntary First Amendment Area is necessary to ensure the safety of those vessels and persons who choose to express their views safely and without interference from, or interfering with, other maritime traffic.

### **IV. Discussion of the Rule**

From July 17, 2016 through July 22, 2016 the Republican National Convention will be held in Cleveland, Ohio. The Primary venue for the 2016 Republican National Convention is

Quicken Loans Arena, which is adjacent or proximate to the Cuyahoga River. Secondary venues and venues hosting convention-related activities include the Great Lakes Science Center, Burke Lakefront Airport, the Rock and Roll Hall of Fame and Museum, and other locations near downtown Cleveland on or in close proximity to navigable waters located on the Cuyahoga River and the portion of Lake Erie adjacent to the downtown Cleveland area. The security zones and safety zones will cover all navigable waters within the Cleveland Harbor surrounding the Burke Lakefront Airport and Rock and Roll Hall of Fame and Museum to the entrance of the Cuyahoga River and from the entrance of the Cuyahoga River to waters extending past the George V. Voinovich Bridge. The duration of the security zones and safety zone are intended to protect personnel, vessels, and the marine environment in these navigable waters while the convention and related activities are taking place. No vessel or person will be permitted to enter the security zones without obtaining permission from the Captain of the Port (COTP) or a designated representative.

The Secretary of the Department of Homeland Security has designated the 2016 Republican National Convention as a National Special Security Event (NSSE). NSSE's are significant events, which, due to their political, economic, social, or religious significance, may render them particularly attractive targets of terrorism or other criminal activity. The Federal government provides support, assistance, and resources to state and local governments to ensure public safety and security during NSSE's.

The Coast Guard has conducted threat, vulnerability, and risk analyses relating to the maritime transportation system and 2016 Republican National Convention activities. Threats confronting the 2016 Republican National Convention assume two primary forms: homeland security threats and violent or disruptive public disorder. Each of the locations described above

are directly adjacent to Lake Erie or the Cuyahoga River and therefore make them vulnerable to waterborne threats. Considerable law enforcement presence on land may render maritime approaches a viable alternative. The City of Cleveland has critical infrastructure in its port area, which is proximate to the downtown area and the Convention's main venues. The Port of Cleveland is an industrial-based port, with significant storage and shipment of hazardous materials. Therefore, with regard to homeland security threats, the 2016 Republican National Convention presents an attractive target for terrorist and extremist organizations.

The Department of Homeland Security Small Vessel Security Strategy sets forth several threat scenarios that must be mitigated in the maritime security planning for the 2016 Republican Convention. These threats include the potential use of a small vessel to: (1) deliver a weapon of mass destruction; (2) launch a stand-off attack weapon; or (3) deliver an armed assault force. The 2016 Republican National Convention maritime security planning anticipates these threats, while minimizing the public impact of security operations.

The security zones, safety zones, and accompanying security measures have been specifically developed to mitigate the risk of threats and vulnerabilities identified in the analysis discussed above. These measures have been limited to the minimum necessary to mitigate risks associated with the identified threats.

While the Coast Guard is concerned about any security threats to the areas described above, the Coast Guard is likewise committed to ensuring that individuals who wish to express their opinions on any issue during the 2016 Republican National Convention have the means to do so in a manner that protects them and other vessels operating on Lake Erie and the Cuyahoga River. Therefore, the Coast Guard is also establishing two safety zones located northwest of the Rock and Roll Hall of Fame and Museum and on the Western side of the entrance to the

Cuyahoga River, wherein the Coast Guard will allow demonstrators or any individual who wishes to express their views. These areas are being established to allow individuals expressing their views the means to do so in a safe manner to their intended audience without posing an undue risk to maritime safety. After analyzing maritime traffic patterns and other environmental factors, the Coast Guard is requiring that any persons or vessels permitted to operate within the safety zones shall travel at the minimum speed necessary to maintain a safe course. The navigation rules shall apply at all times within the safety zones.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss individuals First Amendment rights.

### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time of year of the security zone and safety zone. Vessel traffic will be able to safely transit around the security zones and safety zone; the zones will impact a small designated area and will be enforced only during the event and event-related activities. The security zones and safety zone will be in a location where commercial vessel traffic is expected to be minimal during enforcement;

commercial vessel traffic will be authorized to transit the security zones to the extent compatible with public safety and security. Persons and vessels will be able to operate in the surrounding area adjacent to the security zones and safety zone during the enforcement period, and will be able to enter within the security zones if authorized by the Captain of the Port Buffalo or a designated representative. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zones.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the security zone may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION



CONTACT section above.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves security zones and a safety zone enforced intermittently between July 15, 2016 through July 22, 2016 that will prohibit entry within the waters surrounding the Burke Lakefront Airport, Rock and Roll Hall of Fame, and portions of the Cuyahoga River. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### G. First Amendment Activities

The Coast Guard respects individuals' First Amendment rights. Individuals wishing to

exercise First Amendment Rights are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate First Amendment Activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR 165 as follows:

#### **PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for 33 CFR part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-0557 to read as follows:

§ 165.T09-0557 Security Zones; 2016 Republican National Convention, and Associated Voluntary First Amendment Safety Zones, Lake Erie and Cuyahoga River, Cleveland, OH.

(a) Locations (Broken down into 6 zones that will be enforced intermittently).

(1) Zone 1: Encompasses all waters of Cleveland Harbor (near the Burke Lakefront Airport) starting shoreline at position 41° 31' 45" N, 081° 39' 20" W (just East of Forest City Yacht Club and West of Quay 55); then extending approximately 4,000 feet northwest to position 41° 32' 23" N, 081° 39' 46" W (about 900 feet past the east break wall); then extending approximately 1.6 nm southwest to position 41° 31' 26" N, 081° 41' 28" W; then extending southwester to the shoreline at position 41° 31' 07" N, 081° 41' 17" W (toward the Southwest corner of the Burke Lakefront Airport); then following

the shoreline back to the point of origin.

- (2) Zone 2: Encompasses all waters of Cleveland Harbor (near the Rock and Roll

Hall of Fame and Museum) starting shoreline at position  $41^{\circ} 31' 07''$  N,  $081^{\circ} 41' 17''$  W (near the Southwest corner of the Burke Lakefront Airport); then extending approximately 2,100 feet northwest to position  $41^{\circ} 31' 26''$  N,  $081^{\circ} 41' 28''$  W; then extending approximately 1 nm southwest to position  $41^{\circ} 30' 47''$  N,  $081^{\circ} 42' 35''$  W (about 900 feet past the west break wall); then extending to the shoreline at position  $41^{\circ} 30' 24''$  N,  $081^{\circ} 42' 19''$  W (Southwest of the Rock and Roll Hall of Fame and Museum); then following the shoreline back to the point of origin.

- (3) Zone 3: Encompasses all waters of Cleveland Harbor (from about 2,000 feet

southwest of the Rock and Roll Hall of Fame throughout the Cuyahoga river) starting at  $41^{\circ} 30' 24''$  N,  $081^{\circ} 42' 19''$  W (Southwest of the Rock and Roll Hall of Fame); then extending approximately 2,600 feet northwest to position  $41^{\circ} 30' 47''$  N,  $081^{\circ} 42' 35''$  W; then extending approximately 4,000 feet southwest to position  $41^{\circ} 30' 26''$  N,  $081^{\circ} 43' 17''$  W (about 1,200 feet southwest of Cleveland Harbor West Pierhead Lighthouse); then extending shoreline to position  $41^{\circ} 29' 59''$  N and  $081^{\circ} 43' 01''$  W (just east of the eastern entrance to the Whiskey Island Marina), then following the west bank up the Cuyahoga River, not including the Old River, to position  $41^{\circ} 29' 40''$  N,  $081^{\circ} 41' 55''$  W and extending in a straight line across the river to  $41^{\circ} 29' 38''$  N and  $081^{\circ} 41' 53''$  W (the West side of Carter Road Bridge); then following the east bank of the Cuyahoga River and shoreline back to the point of origin.

- (4) Zone 4: Encompasses all waters of the Cuyahoga River (near collision bend) starting near the Carter Road Bridge at position 41° 29' 40" N, 081° 41' 55" W then extending in a straight line across the river to position 41° 29' 38" N, 081° 41' 53" W; then continuing along the shoreline of the river to a point just east of the George V. Voinovich Bridge at position 41° 29' 11" N, 081° 41' 23" W; then extending in a straight line across the river to 41° 29' 09" N, 081° 41' 23" W; then following the shoreline back to the point of origin.
- (5) Zone 5: Voluntary First Amendment Safety Zone: Encompasses all waters of Lake Erie, Cleveland Harbor; Cleveland, OH (in the west basin) starting at position 41° 30' 30" N, 081° 42' 27" W; then extending approximately 650 feet northwest to position 41° 30' 36" N, 081° 42' 31" W; then extending approximately 1,200 feet southwest to position 41° 30' 29" N, 081° 42' 44" W; then extending to approximately 650 feet to position 41° 30' 23" N and 081° 42' 40" W; then following a straight line back to the point of origin.
- (6) Zone 6: Voluntary First Amendment Safety Zone: Encompasses all waters of Lake Erie, Cleveland Harbor; Cleveland, OH (near Whiskey Island Marina ) starting at position 41° 30' 06" N, 081° 43' 14" W; then extending approximately 600 feet northwest to position 41° 30' 11" N, 081° 43' 17" W; then extending approximately 1,200 feet southwest to position 41° 30' 04" N, 081° 43' 30" W; then extending to position 41° 29' 59" N and 081° 43' 26" W; then following back to the point of origin.

(b) Definitions. As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer

operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP) Buffalo.

(c) Regulations. (1) Under the general security zone regulations in § 165.33 of this part, you may not enter the security zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter the security zones, contact the COTP Buffalo or the COTP's representative. Those in the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. Entrance into the safety zones, zones 5-6, do not require notification to the COTP or the COTP's designated representative; however persons or vessels operating within the safety zones shall travel at the minimum speed necessary to maintain a safe course. Under the general safety zone regulations in § 165.23(d) of this part, each person in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. Vessels wishing to enter the safety zones will not be allowed to cross an active security zone and should make alternative arrangements if necessary.

(d) Enforcement Period. Zones 1 - 4 will be enforced intermittently from 8 a.m. July 15, 2016 through 11:59 p.m. July 22, 2016. Zone 5 will be enforced from 2 p.m. through 11:59 p.m. on July 17, 2016. Zone 6 will be enforced from 9 a.m. on July 17, 2016 through 8 p.m. on July

21, 2016. Public notice of enforcement periods will be made via Broadcast Notice to Mariners over VHF channel 16.

Dated: June 22, 2016

B. W. ROCHE,  
Captain, U. S. Coast Guard,  
Captain of the Port Buffalo.

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